IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 4094 of 2004(K)

AGAINST THE ORDER DATED 27/07/02 IN IA 1750/01 & 1752/01 IN OS.179/1991 of SUB COURT, MANJERI

.....

PETITIONER:

---

1. M/S.MOTOR & GENERAL FINANCE LTD.,
   REGISTERED OFFICE, MGF HOUSE, 17-B, ASAF ALI ROAD,
   NEW DELHI-110 002, REPRESENTED BY ITS RECOVERY
   MANAGER, T.J.THOMAS.

2. M/S. MOTOR & GENERAL FINANCE LTD.,
   REGISTERED OFFICE, M.G.ROAD, ERNAKULAM, KOCHI-11,
   REPRESENTED BY ITS RECOVERY MANAGER, T.J.THOMAS.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS:

---

1. MUJEEB RAHMAN, S/O. KUNJU MUHAMMED,
   KOOLIYADAN HOUSE, N.S.S. COLLEGE P.O.,
   PANDIKKAD ROAD, MANJERI-676 122, MALAPPURAM DIST.

2. NOUSHAD, S/O. KUNJU MUHAMMED,
   KOOLIYADAN HOUSE, N.S.S. COLLEGE P.O.,
   PANDIKKAD ROAD, MANJERI-676 122, MALAPPURAM DIST.

3. FIROZ, S/O. KUNJU MUHAMMED,
   KOOLIYADAN HOUSE, N.S.S. COLLEGE P.O.,
   PANDIKKAD ROAD, MANJERI-676 122, MALAPPURAM DIST.

4. RASHEED, S/O. KUNJU MUHAMMED,
   KOOLIYADAN HOUSE, N.S.S. COLLEGE P.O.,
   PANDIKKAD ROAD, MANJERI-676 122,MALAPPURAM DIST.

5. SABIRA, D/O. KUNJU MUHAMMED,
   KOOLIYADAN HOUSE, N.S.S. COLLEGE P.O.,
   PANDIKKAD ROAD, MANJERI-676 122,MALAPPURAM DIST.

6. KHADEEJA, W/O. KUNJU MUHAMMED,
KOOLIYADAN HOUSE, N.S.S.COLLEGE P.O.,
PANDIKKAD ROAD, MANJERI-676 122,MALAPPURAM DIST.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.4094 OF 2004

.....

DATED THIS THE 18TH JUNE, 2007

J U D G M E N T

Concededly, the order impugned in this Writ Petition is an appealable order in terms of Order XLIII Rule 1 C.P.C. The petitioners did file a C.M.Appeal which was returned, noting certain defects. Instead of curing the defects and resubmitting the appeal memorandum before the appellate court, the petitioners approached this Court under Article 227 of the Constitution.

2. The learned counsel for the petitioners submits that it was in view of coercive processes issued by the execution court that the petitioners became obliged to approach this Court invoking the powers under Article 227. But then, it is seen that though stay was applied for, this Court did not grant stay, but only issued notice by speed post. Though such notice was ordered as early as on 5.2.2004, process is not remitted so far. In all probability the execution has proceeded. The Writ Petition however will stand disposed of making it clear that it will be open to the petitioners to pursue their remedies by way of appeal against the impugned order.

(PIUS C.KURIAKOSE, JUDGE)

tgl